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|---------------------------------------|---|-----------------|
| In re Application of | : | |
| Burkett | : | |
| Application No. 10/069,836 | : | DECISION ON |
| PCT No.: PCT/US00/20017 | : | |
| Int. Filing Date: 20 July 2000 | : | PETITION UNDER |
| Priority Date: 20 July 2000 | : | |
| Att. Docket No.: 344-P-30-USA | : | 37 CFR 1.137(b) |
| For: Improved Diagnostic Method For | : | |
| Detecting Dysplastic Epithelial Tis.. | : | |

This is in response to the petition filed on 04 November 2002.

BACKGROUND

This international application was filed on 20 July 2000, and did not claim an earlier priority date. No Demand electing the United States was filed before the expiration of 19 months from the priority date. Accordingly, the 20 month time period to file the basic national fee in the U.S. expired as of midnight on 20 March 2002.

On 26 February 2002, applicants filed *inter alia* a Transmittal Letter and fee calculation sheet, which showed a fee amount due of \$585.00, made up of a basic national fee of \$520.00 and a \$65.00 surcharge under 37 CFR 1.492(e). No payment appears to have accompanied this Transmittal Letter.

On 08 May 2002, a Notice of Insufficient Basic National Fee (Form PCT/DO/EO/904) was mailed to applicant, indicating that the appropriate large entity basic national fee amount due was \$740.00, under 37 CFR 1.492(a)(2). The application became abandoned with respect to the United States for failure to timely pay the required basic national fee.

On 10 May 2002, applicant filed a Transmittal Letter accompanied by the instant Declaration of the inventor and a check for \$585.00.

On 27 June 2002, applicant filed a instant Transmittal Letter and papers pertaining to the payment of "Balance of Basic National Fee \$155.00."

On 01 October 2002, a Communication was mailed to applicant, indicating that the international application had become abandoned with respect to the United States as of midnight on 20 March 2002 for failure to timely pay the entire required basic national fee.

Applicant filed the instant petition on 04 November 2002.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed; (2) the petition fee as set forth in § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Regarding requirement (1), the required reply in the form of payment of the full basic national fee was filed on 27 June 2002.

Regarding requirement (2), the petition fee accompanied the petition.

Regarding requirement (3), the petition includes a statement that "the entire delay in payment of the entire Basic National Fee was unintentional." This statement is being construed as a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Petitioner must notify the Patent and Trademark Office if such an interpretation of the statement in the petition is not correct. Thus, the statement in the petition is being accepted in satisfaction of 37 CFR 1.137(b)(3).

Regarding requirement (4), no terminal disclaimer is required because the international filing date of this application is later than 8 June 1995.

Applicants paid the basic national fee in the amount of \$740.00, the surcharge under 37 CFR 1.492(e) in the amount of \$130.00, and the petition fee in the amount of \$1240.00. However, in view of the assertion of small entity status contained in the Transmittal Letter filed on 26 February 2002, applicants were entitled to pay these amounts, reduced by one half. Accordingly, a refund in the amount of \$1055.00 will be issued to counsel.

DECISION

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application is being forwarded to the National Stage Processing Branch for further processing. The date of this application under 35 U.S.C. 371(c) (1), (2) and (4) is **04 November 2002**.



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